



MICHIGAN PROBATE JUDGES ASSOCIATION

324 N. Pine St. #1
Lansing, Michigan 48933
Message Relay No. (517) 482-7534

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Corbin R. Davis
Clerk, Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

August 30, 2005

Dear Mr. Davis,

Enclosed is a copy of Michigan Probate Judges Association
Comments on ADM 2004-42.

As I indicated by letter of July 13, 2005, the Michigan Probate Judges Association strongly opposes ADM 2004-42. The Association Board of Directors voted unanimously to oppose the proposed order June 27, 2005. Association general membership also expressed a unanimous vote of support for the Board's position at the June general membership meeting.

The proposed terms of ADM 2004-42 have continued to generate such discussion that it necessitated development of a more detailed position outlining the specific concerns raised by members. Attached Association comments indicate consensus on the need for accurate case disposition data and resources to implement effective caseload management plans before consideration is given to defining failure to comply and imposing sanctions.

Again, MPJA urges the Michigan Supreme Court not to adopt ADM 2004-42.

Sincerely,

A handwritten signature in cursive script, reading "Kathryn J. Root", is positioned above the typed name and title.

Kathryn J. Root
President

**MICHIGAN PROBATE JUDGES ASSOCIATION
COMMENTS ON ADM 2004-42**

In 2003, the Supreme Court adopted ADM 2003-7, effective January 1, 2004, which directed the State Court Administrator, “within available resources”, to assist trial courts in implementing caseload management plans designed to achieve the timelines set forth in the administrative order. The Supreme Court also stated: “On further order of the Court, the following time guidelines for case processing are provided as goals for the administration of court caseloads. These are only guidelines....”

Unfortunately, ADM 2004-42 refers to the “goals” and “guidelines” as set forth in ADM 2003-7 as “standards” that would form the basis for filing a request for investigation with the Judicial Tenure Commission against any judge who consistently failed to comply with those “standards”. Had the Michigan Probate Judges Association (“MPJA”) known that the Supreme Court might treat those goals as standards, MPJA would have offered detailed comments setting forth the deficiencies in the guidelines as they pertained to Probate Court. MPJA opposes the proposed amendment to MCR 8.103(4) until such time as achievable, evidence-based standards are actually identified.

Assuming the use of the term “standards” was a mistake and should be replaced with the word “guidelines”, ADM 2004-42 actually becomes more objectionable because of the flaws in those guidelines as they apply to Probate Court. The “guidelines” have not been validated. To date, no data has been collected that would enable anyone to determine if the “guidelines” represent current practice. The proposal would seek to punish judges for failure to meet the “goals” of ADM 2003-7. It is one thing to punish judges for failing to meet a standard, it is quite another to threaten punishment for failing to meet a goal. Goals generally reflect optimum performance and not base line requirements.

The Probate Court Guidelines contained in ADM 2003-7 are the subject of considerable debate. Those Guidelines only measure a small part of the work of the Probate Court; focusing on selected contested cases. Even as to those cases, MPJA does not believe the “guidelines” should be “standards” calling for referrals to the Judicial Tenure Commission without evidence that a substantial majority of the Probate Courts that have fully implemented caseload management plans can actually meet these “guidelines”.

SCAO has already been informed by the Probate Courts as to the difficulty in attempting to gather the data necessary to demonstrate whether or not there is compliance with these “guidelines”. The system relies on the manual input of data to show that a matter within a case is contested and then relies on the manual input of data to show that a particular matter within a case has been concluded. The opportunity for clerical error is substantial. It is like having the Circuit and District Courts report on the disposition of motions within cases. Experience so far indicates that many contested cases either fail to be identified as contested or fail, if shown as contested, as having been concluded. At this time, reliable data, in the format requested by SCAO, is not capable of being

produced by current information systems. Even if this data could be accurately collected and reported it is of no use in evaluating the effectiveness of the court's case processing or an individual judge's performance. The focus should be on the length of time it takes from filing thru adjudication and not on the sheer number of arbitrarily defined contested events in a particular estate.

The guidelines have other obvious deficiencies. For example, if someone files a "Petition to Determine Title" the case should be adjudicated within one year, but, if the petitioner merely converts the same petition to a civil action, the guidelines allow for two years. Even more perplexing is the provision that 100% of all miscellaneous petitions should be adjudicated within 35 days of the date of filing. Cases are generally set for hearing 4-6 weeks after filing so the judge may not even see the petition within 35 days.

Effective management systems, together with "available resources", are critical to the ability of any court to meet any standard. The resources behind the probate courts of this state as well as the demands on those resources vary widely. In some counties, the Department of Human Services conducts a home study on the nominated guardian in a minor guardianship prior to the initial hearing while in other counties the Department does not have the resources to do any home studies. Caseloads and funding levels vary widely from county to county.

One of the unique challenges facing probate judges is that while they do all of the juvenile work in most of the counties in Michigan, they are no longer Chief Judges of that work and cannot control the caseload management systems. In addition, in many counties, they are also assigned to domestic relations dockets with no management authority. Many Chief Judges of circuit court do not have hands-on experience with the family division workload and are not in a position to comment on the guidelines as they pertain to the work of the probate judges.

MPJA would respectfully suggest that the Supreme Court consider revising ADM 2003-7 so that SCAO, as it does with Circuit and District Courts, would measure all of the work of the Probate Courts. This would simplify the collection of data and determine the current practice in this State and form a sound basis for setting standards for caseload management. Those standards should take into account the impact of successful plans as well as variations based on volume and available resources.

MPJA does recognize that reporting data on case disposition is a valuable tool in measuring performance. That data will identify judges who may be persistently dilatory. However, that data is only the first step in the analysis. "Available resources" together with the demands on those resources must be assessed before a referral is made to the Judicial Tenure Commission.

MPJA would urge the Supreme Court to complete the process of implementing caseload management plans "within available resources" before developing a punitive process for failure to adhere to those plans.